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MONTANA LEGISLATIVE HISTORY

Chapter 341 ~~19~~ 2001

Bill H _____ S 465 Original bill & history X C

H. Committee on BUSINESS & LABOR			S. Committee on BUSINESS & LABOR		
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Did this bill originate in an interim committee? ___ Yes X No

Committee _____ Report _____

AN ACT AMENDING THE INSURANCE INFORMATION AND PRIVACY PROTECTION ACT; PROVIDING FOR EXEMPTION FROM THE ACT FOR PERSONS COMPLYING WITH FEDERAL REGULATIONS THAT ARE INCONSISTENT WITH THE ACT AND NOT LESS PROTECTIVE OF PRIVACY THAN THE ACT; AUTHORIZING THE COMMISSIONER OF INSURANCE TO ADOPT RULES; REVISING DEFINITIONS; REVISING REQUIREMENTS FOR NOTICE OF INSURANCE INFORMATION PRACTICES; REVISING STATUTES RELATING TO DISCLOSURE AUTHORIZATION FORMS; REVISING PROVISIONS RELATING TO EXCEPTIONS FROM PROHIBITED DISCLOSURES; PROVIDING RESTRICTIONS ON THE USE OF PERSONAL INFORMATION FOR MARKETING PURPOSES; REVISING CIVIL PENALTIES AND INDIVIDUAL REMEDIES APPLICABLE TO DISCLOSURE VIOLATIONS; AMENDING SECTIONS 33-19-102, 33-19-104, 33-19-202, 33-19-306, 33-19-405, AND 33-19-407, MCA; REPEALING SECTIONS 33-19-204, 33-19-402, 33-19-404, AND 33-19-406, MCA; AND PROVIDING EFFECTIVE DATES AND A RETROACTIVE APPLICABILITY DATE.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 33-19-102, MCA, is amended to read:

"**33-19-102. Purpose.** The purpose of this chapter is to establish standards for the collection, use, and disclosure of information gathered in connection with insurance transactions by insurance institutions, insurance producers, or insurance-support organizations; to maintain a balance between the need for information by those conducting the business of insurance and the public's need for fairness in insurance information practices, including the need to minimize intrusiveness; to establish a regulatory mechanism to enable natural persons to ascertain what information is being or has been collected about them in connection with insurance transactions and to have access to ~~such~~ that information for the purpose of verifying or disputing its accuracy; to limit the disclosure of information collected in connection with insurance transactions; and to enable insurance applicants and policyholders to obtain the reasons for any adverse underwriting decision. The purpose of this chapter is also to provide privacy protection consistent

with federal regulations governing the privacy of medical records when this chapter is consistent with those federal regulations. In those instances in which this chapter and the federal privacy regulations are inconsistent and this chapter provides privacy protection beyond that offered by the federal regulations, the purpose of this chapter is to provide that additional privacy protection."

Section 2. Section 33-19-104, MCA, is amended to read:

"**33-19-104. Definitions.** As used in this chapter, the following definitions apply:

(1) (a) "Adverse underwriting decision" means any of the following actions with respect to insurance transactions involving insurance coverage that are individually underwritten:

(i) a declination of insurance coverage;

(ii) a termination of insurance coverage;

(iii) failure of an insurance producer to apply for insurance coverage with a specific insurance institution that the insurance producer represents and that is requested by an applicant;

(iv) in the case of a property or casualty insurance coverage:

(A) placement by an insurance institution or insurance producer of a risk with a residual market mechanism, an unauthorized insurer, or an insurance institution that specializes in substandard risks; or

(B) the charging of a higher rate on the basis of information that differs from that which the applicant or policyholder furnished;

(v) in the case of a life, health, or disability insurance coverage, an offer to insure at higher than standard rates.

(b) The following actions are not adverse underwriting decisions, but the insurance institution or insurance producer responsible for their occurrence shall nevertheless provide the applicant or policyholder with the specific reason or reasons for their occurrence:

(i) the termination of an individual policy form on a class or statewide basis;

(ii) a declination of insurance coverage solely because the coverage is not available on a class or statewide basis; or

(iii) the rescission of a policy.

(2) "Affiliate" or "affiliated" means a person who directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with another person.

(3) "Applicant" means a person who seeks to contract for insurance coverage other than a person seeking group insurance that is not individually underwritten.

(4) "Consumer report" means any written, oral, or other communication of information bearing on a natural person's credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living that is used or expected to be used in connection with an insurance transaction.

(5) "Consumer reporting agency" means a person who:

(a) regularly engages, in whole or in part, in the practice of assembling or preparing consumer reports for a monetary fee;

(b) obtains information primarily from sources other than insurance institutions; and

(c) furnishes consumer reports to other persons.

(6) "Control", including the terms "controlled by" or "under common control with", means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract other than a commercial contract for goods or nonmanagement services, or otherwise, unless the power is the result of an official position with or corporate office held by the person.

(7) "Declination of insurance coverage" means a denial, in whole or in part, by an insurance institution or insurance producer of requested insurance coverage.

(8) "Individual" means a natural person who:

(a) regarding property or casualty insurance, is a past, present, or proposed named insured or certificate holder;

(b) regarding life, health, or disability insurance, is a past, present, or proposed principal insured or certificate holder;

(c) is a past, present, or proposed policyowner;

(d) is a past or present applicant;

(e) is a past or present claimant; or

(f) derived, derives, or is proposed to derive insurance coverage under an insurance policy or certificate subject to this chapter.

(9) "Institutional source" means a person or governmental entity that provides information about

an individual to an insurance producer, insurance institution, or insurance-support organization, other than:

(a) an insurance producer;

(b) the individual who is the subject of the information; or

(c) a natural person acting in a personal capacity rather than a business or professional capacity.

(10) "Insurance function" means claims administration, claims adjustment and management, fraud investigation, underwriting, loss control, ratemaking functions, reinsurance, risk management, case management, disease management, quality assessment, quality improvement, provider credentialing verification, utilization review, peer review activities, subrogation, grievance procedures, insurance transactions, and internal administration of compliance and policyholder service functions.

(11) (a) "Insurance institution" means a corporation, association, partnership, reciprocal exchange, interinsurer, Lloyd's insurer, fraternal benefit society, or other person engaged in the business of insurance, including health maintenance organizations, and health service corporations as defined in 33-30-101.

(b) Insurance institution does not include insurance producers or insurance-support organizations.

(12) "Insurance producer" means an insurance producer as defined in 33-17-102 and 33-30-311.

(13) (a) "Insurance-support organization" means a person who assembles or collects information about natural persons for the purpose of providing the information to an insurance institution or insurance producer for insurance transactions, including:

(i) the furnishing of consumer reports or investigative consumer reports to an insurance institution or insurance producer for use in connection with an insurance transaction; or

(ii) the collection of personal information from insurance institutions, insurance producers, or other insurance-support organizations for the purpose of detecting or preventing fraud, material misrepresentation, or material nondisclosure in connection with insurance underwriting or insurance claim activity.

(b) The following persons are not insurance-support organizations for purposes of this chapter: insurance producers, government institutions, medical care institutions, and medical professionals.

(14) "Insurance transaction" means a transaction involving insurance primarily for personal, family, or household needs, rather than for business or professional needs, that entails:

(a) the determination of an individual's eligibility for an insurance coverage, benefit, or payment;

or

(b) the servicing of an insurance application, policy, contract, or certificate.

(15) "Investigative consumer report" means a consumer report or portion of a consumer report containing information about a natural person's character, general reputation, personal characteristics, or mode of living obtained through personal interviews with the person's neighbors, friends, associates, acquaintances, or others who may have knowledge concerning this type of information.

(16) "Licensee" means:

(a) an insurance institution, insurance producer, or other person who is licensed or required to be licensed, authorized or required to be authorized, or registered or required to be registered pursuant to this title; or

(b) a surplus lines insurer.

~~(16)~~(17) "Medical care institution" means a facility or institution that is licensed to provide health care services to natural persons, including but not limited to health maintenance organizations, home health agencies, hospitals, medical clinics, public health agencies, rehabilitation agencies, and skilled nursing facilities.

~~(17)~~(18) "Medical professional" means a person who is licensed or certified to provide health care services to natural persons, including but not limited to a chiropractor, clinical dietitian, clinical psychologist, dentist, nurse, occupational therapist, optometrist, pharmacist, physical therapist, physician, podiatrist, psychiatric social worker, or speech-language pathologist.

~~(18)~~(19) "Medical record information" means personal information that:

(a) relates to an individual's physical or mental condition, medical history, medical claims history, or medical treatment; and

(b) is obtained from a medical professional or medical care institution, from the individual, or from the individual's spouse, parent, or legal guardian.

~~(19)~~(20) "Person" means a natural person, corporation, association, partnership, or other legal entity.

~~(20)~~(21) "Personal information" means any individually identifiable information gathered in connection with an insurance transaction from which judgments can be made about an individual's character, habits, avocations, finances, occupation, general reputation, credit, health, or any other

personal characteristics. Personal information includes an individual's name and address and medical record information but does not include privileged information.

~~(21)~~(22) "Policyholder" means a person who:

(a) in the case of individual property or casualty insurance, is a present named insured;

(b) in the case of individual life, health, or disability insurance, is a present policyowner; or

(c) in the case of group insurance that is individually underwritten, is a present group certificate holder.

~~(22)~~(23) "Pretext interview" means an interview during which a person, in an attempt to obtain information about a natural person, performs one or more of the following acts:

(a) pretends to be someone else;

(b) pretends to represent a person not in fact being represented;

(c) misrepresents the true purpose of the interview; or

(d) refuses to provide identification upon request.

~~(23)~~(24) "Privileged information" means any individually identifiable information that:

(a) relates to a civil or criminal proceeding involving an individual; and

(b) is collected in connection with or in reasonable anticipation of a claim for insurance benefits or civil or criminal proceeding involving an individual. Information otherwise meeting the requirements of privileged information under this subsection is considered personal information under this chapter if it is disclosed in violation of 33-19-306.

~~(24)~~(25) "Residual market mechanism" means an association, organization, or other entity defined or described in 61-6-144.

~~(25)~~(26) ~~(a)~~ "Separate, written authorization" means an individual's written authorization that is:

~~(i)~~(a) given to the recipient of personal or privileged information that has been disclosed pursuant to 33-19-306(3) through ~~(17)~~ (22); and

~~(ii)~~(b) separate from any written authorization obtained by the disclosing insurance institution, insurance producer, or insurance-support organization ~~pursuant to 33-19-204~~.

~~(b) The term does not include the insurance institution, insurance producer, or insurance-support organization that discloses personal or privileged information pursuant to 33-19-306(3) through (17).~~

~~(26)~~(27) "Termination of insurance coverage" or "termination of an insurance policy" means either

a cancellation or nonrenewal of an insurance policy, in whole or in part, for any reason other than the failure to pay a premium as required by the policy.

~~(27)~~(28) "Unauthorized insurer" means an insurance institution that has not been granted a certificate of authority by the commissioner to transact the business of insurance in this state."

Section 3. Exemption based on federal medical privacy rules -- notice to commissioner required. (1) If a licensee is subject to and in compliance with a federal rule that is part of the federal health insurance portability and accountability privacy rules, 45 CFR, parts 160 and 164, and the federal rule with which the licensee complies is inconsistent with a provision of this chapter and not less protective of consumer privacy, the licensee is exempt from compliance with the inconsistent provision of this chapter.

(2) If a licensee considers itself exempt from a provision of this chapter for the reason provided in subsection (1), the licensee shall give written notice to the commissioner of that exemption. The notice must include a statement of the reason for the claimed exemption.

Section 4. Rulemaking authorized. The commissioner may adopt rules to carry out the provisions of this chapter.

Section 5. Section 33-19-202, MCA, is amended to read:

"**33-19-202. Notice of insurance information practices -- delivery of notice.** ~~(1) An insurance institution or insurance producer~~ A licensee shall provide a clear and conspicuous notice of information practices that accurately reflects its privacy policies and practices to ~~all applicants or policyholders~~ individuals about whom personal information is collected by the licensee in connection with insurance transactions as ~~provided below:~~ follows:

~~(a) in~~ (1) (a) Except as provided in subsection (2), in the case of ~~an application for insurance~~ a policyholder or certificate holder, a notice must be ~~provided no later than~~ delivered by an insurance institution:

~~(i)~~(i) in the case of policies issued after [the effective date of this section], no later than at the time of the delivery of the insurance policy or certificate ~~when personal information is collected only from~~

~~the applicant or from public records; or~~

~~(ii) at the time the collection of personal information is initiated when personal information is collected from a source other than the applicant or public records~~, unless the notice delivered to the policyholder or certificate holder pursuant to subsection (4)(a) when the policyholder or certificate holder was an applicant is still accurate;

(ii) at least annually, the 12-month period for which may be defined by the insurance institution and must be used consistently~~;~~. The notice to certificate holders required in this subsection (1)(a)(ii) is not required if the insurance institution has not had any communication, including receiving a claim, from a certificate holder since the initial or last annual notice provided to the certificate holder.

~~(b)~~(iii) ~~in~~ in the case of a policy ~~renewal~~ renewed after [the effective date of this section], ~~a notice must be provided~~ no later than the policy renewal date, except that notice is not required in connection with a policy renewal if:

~~(i)~~(A) personal information is collected only from the policyholder or from public records; or

~~(ii)~~(B) a notice meeting the requirements of this section has been given within the previous ~~24~~ 12 months~~; or~~.

~~(c)~~(b) ~~in the case of a policy reinstatement or change in insurance benefits, a~~ When a policyholder or certificate holder obtains a new insurance product or service or when a policy is reinstated and any notices already provided are no longer accurate with respect to the new product, service, or reinstatement, a new or revised and accurate notice must be ~~provided~~ delivered to the policyholder or certificate holder no later than the time ~~a request for a policy reinstatement or change in insurance benefits is received by the insurance institution~~ that the product or service is provided by the licensee or at the time of reinstatement, except that notice is not required if personal information is collected only from the policyholder or from public records.

(2) (a) An insurance institution is not required to meet the requirements of this section with respect to certificate holders until the insurance institution has personally identifiable information regarding the certificate holder.

(b) Until the notice requirements of subsection (1) are met, a third party administrator or other agent or representative of an insurance institution may not disclose personal information, except as allowed in 33-19-306(2).

~~(2)~~(3) The notice required in subsection (1) must be in writing and must state:

(a) ~~whether~~ the categories of personal information that may be collected from persons other than the individual or individuals ~~proposed for coverage~~ covered;

(b) ~~the types of personal information that may be collected and the types of sources and investigative techniques that may be used to collect the information;~~

~~(c) the types of disclosures identified in subsections (3), (4), (5), (6), (7), (10), (12), and (14) of 33-19-306 and the circumstances under which the disclosures may be made without prior authorization. However, only those circumstances that occur with such frequency as to indicate a general business practice must be described.~~ if a licensee discloses personal or privileged information to a third party without an authorization pursuant to an exception in 33-19-306 or [section 8], a separate description of the categories of information and the categories of third parties to whom the licensee discloses personal information;

(c) the categories of personal information about a former policyholder or certificate holder that the licensee discloses pursuant to 33-19-306 and [section 8] and the categories of persons to whom the disclosure may be made;

(d) any disclosure that the licensee makes pursuant to section 603(d)(2)(A)(iii) of the Fair Credit Reporting Act, 15 U.S.C. 1681, et seq.;

(e) the licensee's policies and practices with respect to protecting the confidentiality and security of personal and privileged information;

~~(d)~~(f) a description of the rights established under 33-19-301 and 33-19-302 and the manner in which those rights may be exercised; ~~and~~

~~(e)~~(g) that information obtained from a report prepared by an insurance-support organization may be retained by the insurance-support organization and disclosed to other persons;

~~(3) In lieu of the notice prescribed in subsection (2), the insurance institution or insurance producer may provide an abbreviated notice informing the applicant or policyholder that~~ if the licensee collects or uses information from an insurance-support organization; and

(h) that an individual is entitled to receive, upon written request to the licensee, a record of any subsequent disclosures of medical record information made by the licensee pursuant to 33-19-306 that must include:

(i) the name, address, and institutional affiliation, if any, of each person receiving or examining the medical information during the preceding 3 years;

(ii) the date of the receipt or examination; and

(iii) to the extent practicable, a description of the information disclosed.

(4) In the case of individuals who are not policyholders or certificate holders:

(a) except as provided in subsection (7), in the case of an applicant, an insurance institution shall provide a notice as described in subsection (3) when the applicant submits an application;

(b) for all other individuals, a notice must be given when a licensee seeks an authorization pursuant to 33-19-306(2) to make a disclosure that is not allowed by a disclosure exception provided for in 33-19-306(3) through (22) or [section 8]. A notice given pursuant to this subsection (4)(b) may be in an abbreviated form and must state that:

~~(a)~~(i) personal information may be collected from persons other than the individual or individuals proposed for coverage;

~~(b)~~(ii) the information as well as other personal or privileged information subsequently collected by the insurance institution or insurance producer may in certain circumstances be disclosed to third parties without authorization;

~~(c)~~(iii) a right of access and correction exists with respect to all personal information collected; and

~~(d)~~(iv) the notice prescribed in subsection ~~(2)~~ (3) must be furnished ~~to the applicant or policyholder~~ upon request. The abbreviated notice provided for in this subsection (4)(b) must explain a reasonable means by which an individual may obtain that notice.

~~(4)~~(5) The obligations imposed by this section upon ~~an insurance institution or insurance producer~~ a licensee may be satisfied:

(a) by another ~~insurance institution or insurance producer~~ licensee authorized to act on its behalf;

(b) by sending a notice to the primary policyholder of an individual policy or to the primary certificate holder.

(6) A licensee shall provide a notice required by this section so that an intended recipient can reasonably be expected to receive actual notice in writing or, if the intended recipient agrees, electronically, as follows:

(a) by hand-delivering a printed copy of the notice to the intended recipient;

(b) by mailing a printed copy of the notice to the last-known address of the individual separately or in a policy, billing, or other written communication; or

(c) for an individual who has agreed to conduct transactions electronically, as provided in applicable law, by posting the notice on the electronic site and requiring the individual to acknowledge receipt of the notice as a necessary step to obtaining a particular insurance product or service.

(7) An insurance institution may provide the notice required in subsection (4)(a) telephonically if an application is submitted by telephone. A telephone notice under this subsection may be in abbreviated form as provided for in subsections (4)(b)(i) through (4)(b)(iv).

(8) If a licensee is required to provide notice concerning privacy in addition to the notice required by this section, the licensee may satisfy the notice requirements in this section through the use of combined or separate notices. If more than one notice form is used, a notice containing provisions specific to Montana must conspicuously refer to any other notice form."

Section 6. Disclosure authorizations -- content -- conditions prohibited. If a disclosure authorization is required by this chapter, the following requirements apply:

(1) A valid authorization to disclose personal information must be in written form, or in electronic form as provided by applicable law, and must contain the following:

(a) the identity of the individual who is the subject of the personal information;

(b) a description of the types of personal information to be disclosed;

(c) a description of the entity or type of entity to which the licensee discloses personal information, the purpose of the disclosure, and how the information will be used;

(d) the signature of the individual who is the subject of the personal information or the individual who may by law allow the disclosure and the date on which the authorization is signed; and

(e) notice of the length of time for which the authorization is valid, notice that the individual may revoke the authorization at any time, and notice of the procedure for revocation.

(2) An authorization remains valid for a period stated in the authorization that does not exceed 24 contiguous months.

(3) An individual who is the subject of personal information and has signed an authorization may

revoke the authorization at any time.

(4) A licensee shall retain the original authorization or a copy of it in the record of the individual who is the subject of personal information.

(5) A licensee may not condition enrollment, coverage, benefits, or rates on an individual's signing of a disclosure authorization unless the disclosure sought through the authorization is necessary for the licensee to perform an insurance function.

Section 7. Section 33-19-306, MCA, is amended to read:

"**33-19-306. Disclosure limitations and conditions.** (1) Except as provided in this section, ~~an insurance institution, insurance producer, or insurance support organization~~ a licensee may not disclose ~~any~~ personal or privileged information about an individual ~~collected or received in connection with an insurance transaction~~ collected or received in connection with an insurance transaction.

(2) Disclosure may be made with the written authorization of the individual ~~but:~~

~~(a) if the authorization is submitted by another insurance institution, insurance producer, or insurance support organization, the authorization must meet the requirements of 33-19-204; or~~

~~(b) if the authorization is submitted by a person other than an insurance institution, insurance producer, or insurance support organization, the authorization must be:~~

~~(i) dated;~~

~~(ii) signed by the individual;~~

~~(iii) sufficient to identify the nature of the information to be disclosed and the person to whom the information is to be disclosed; and~~

~~(iv) obtained 1 year or less prior to the date a disclosure is sought pursuant to this subsection.~~ The authorization must be in the form provided in [section 6].

(3) Disclosure limited to that which is reasonably necessary may be made to a person ~~other than an insurance institution, insurance producer, or insurance support organization, provided that the disclosure is limited to that which is reasonably necessary:~~

~~(a) to enable the person to perform an insurance function for the disclosing insurance institution, insurance producer, or insurance support organization and the person agrees not to further disclose the information without the individual's separate, written authorization; or~~

~~(b) to enable the person that has agreed not to further disclose the information without the individual's separate, written authorization to provide information to the disclosing insurance institution, insurance producer, or insurance support organization for the purpose of:~~

~~(i) determining an individual's eligibility for an insurance benefit or payment; or~~

~~(ii)~~ to enable the person to provide information to the disclosing licensee for the purpose of detecting or preventing criminal activity, fraud, material misrepresentation, or material nondisclosure in connection with an insurance transaction. A person to whom information is disclosed pursuant to this subsection shall agree in writing not to further disclose the information, but this requirement for an agreement does not prevent disclosure of information that is necessary to obtain further information for the purposes set forth in this subsection.

(4) (a) Disclosure may be made ~~to an insurance institution, insurance producer, insurance support organization, or self-insurer that has agreed not to further disclose the information without the individual's separate, written authorization~~ between licensees if the information disclosed is limited to that which is reasonably necessary:

~~(a)~~(i) to detect or prevent criminal activity, fraud, material misrepresentation, or material nondisclosure in connection with insurance transactions; or

~~(b)~~(ii) for either the disclosing or receiving ~~insurance institution, insurance producer, or insurance support organization~~ licensee to perform its insurance function in connection with an insurance transaction involving ~~the~~ an individual.

(b) A licensee receiving information pursuant to this subsection (4) may not further disclose the information unless otherwise permitted by this section.

(5) Disclosure may be made to a medical care institution ~~or~~, a medical professional ~~of~~, or the individual to whom the information pertains if that information is reasonably necessary for the following purposes:

(a) verifying insurance coverage or benefits;

(b) informing an individual of a medical problem of which the individual may not be aware; ~~or~~

(c) conducting an operations or services audit; or

(d) determining the reasonableness or necessity of medical services.

(6) Disclosure:

(a) may be made to an insurance regulatory authority that agrees not to further disclose the information without the individual's separate, written authorization;

(b) must be made as required by law; and

(c) must be or may be made to the commissioner as required or permitted by law.

(7) Disclosure may be made by a licensee or an insurance-support organization to a law enforcement or other government authority or to an insurance regulatory agency:

(a) to protect the interests of ~~the insurance institution, insurance producer, or insurance-support organization~~ a licensee in preventing, investigating, or prosecuting the perpetration of fraud upon ~~it~~ a licensee; or

(b) if the ~~insurance institution, insurance producer, or insurance-support organization~~ licensee or insurance-support organization reasonably believes that illegal activities have been conducted by the individual.

(8) Disclosure that is limited to that which is reasonably necessary may be made as otherwise permitted or required by law.

(9) Disclosure that is limited to that which is reasonably necessary may be made in response to a facially valid administrative or judicial order, including a search warrant or subpoena.

(10) (a) Except as provided in subsection (10)(b), disclosure that is limited to that which is reasonably necessary may be made for the purpose of conducting actuarial or research studies~~, provided that~~ if:

(i) ~~no~~ an individual is not identified in any actuarial or research report;

(ii) materials allowing the individual to be identified are returned or destroyed as soon as they are no longer needed; and

(iii) the actuarial or research organization agrees not to further disclose the information without the individual's separate, written authorization.

(b) Disclosure of information may be made for:

(i) health research that is subject to the approval of an institutional review board and the requirements of federal law and regulations governing biomedical research; or

(ii) epidemiological or drug therapy outcomes research that requires information that has been made anonymous to protect the identity of the patient through coding or encryption.

(11) Disclosure may be made to a party or a representative of a party to a proposed ~~or consummated~~ sale, transfer, merger, or consolidation of all or part of the business of the ~~insurance institution, insurance producer,~~ licensee or insurance-support organization~~,~~ if:

(a) prior to the consummation of the sale, transfer, merger, or consolidation only information is disclosed that is reasonably necessary to enable the recipient to make business decisions about the purchase, transfer, merger, or consolidation; and

(b) the recipient agrees not to further disclose the information without the individual's separate, written authorization.

(12) (a) Disclosure that is limited to that which is reasonably necessary may be made to ~~any~~ a licensee's affiliate ~~whose only~~ as follows:

(i) to allow use of the information ~~will be~~ in connection with an audit of the ~~insurance institution or insurance producer if the affiliate agrees not to disclose the information for any other purpose or to unaffiliated persons~~ licensee;

(ii) to enable a licensee to perform an insurance function; or

(iii) as allowed by [section 8].

(b) ~~Disclosure of personal information that is limited to an individual's name, age, sex, family composition, address, telephone number, occupation, and avocations may be made to any affiliate whose only use of the information is in connection with the marketing of insurance or financial products if the affiliate agrees not to disclose the information for any other purpose or to unaffiliated persons~~ A licensee disclosing pursuant to this section must have a written agreement with the affiliate that the affiliate will not use or further disclose information received except to carry out the purposes set forth in subsection (12) (a) and that if further disclosure is necessary to meet those purposes, the disclosure will be made only to the licensee or to a person who agrees in writing to be bound by the same prohibition on use and disclosure. A disclosure allowed by [section 8] is governed by that section.

(13) ~~Except for medical record information, disclosure may be made by a consumer reporting agency to a person other than an insurance institution or insurance producer~~ Disclosure that is limited to that which is reasonably necessary may be made to an insurance-support organization to perform insurance-support services for the licensee. The insurance-support organization may redisclose the information to the extent necessary to provide its services to its member or subscriber licensees and other

insurance-support organizations or as otherwise permitted by law, but not for a marketing purpose.

(14) ~~Disclosure~~ Notwithstanding any other provision of this section, disclosure may be made to a group policyholder for the purpose of reporting claims experience or conducting an audit of the ~~insurance institution's or insurance producer's~~ licensee's operations or services if the information disclosed is reasonably necessary for the group policyholder to conduct the review or audit and the group policyholder agrees not to further disclose the information without the individual's separate, written authorization. Information disclosed pursuant to this subsection must be edited to prevent the identification of the applicant, policyholder, or certificate holder.

(15) Disclosure that is limited to that which is reasonably necessary may be made to a professional peer review organization for the purpose of reviewing the service or conduct of a medical care institution or medical professional if the professional peer review organization agrees not to further disclose the information without the individual's separate, written authorization.

(16) Disclosure that is limited to that which is reasonably necessary may be made to a governmental authority as required by federal or state law or for the purpose of determining the individual's eligibility for health benefits for which the governmental authority may be liable.

(17) Disclosure that is limited to that which is reasonably necessary may be made to a certificate holder or policyholder for the purpose of providing information regarding the status of an insurance transaction. Disclosure pursuant to this subsection may not be made to a group policyholder without a separate, written authorization from the individual.

(18) Disclosure may be made to a person contractually engaged to provide services to enable a licensee to perform an insurance function, or to perform an insurance function on behalf of a licensee, if the person agrees in writing that the person will not use or further disclose information obtained or developed pursuant to the engagement except to carry out the limited purpose of the engagement and that if further disclosure is necessary to perform the insurance function, that disclosure will be made only to the licensee or to a person who agrees in writing to be bound by the same prohibitions on use and disclosure.

(19) If a licensee has to disclose personal information in order to perform an insurance function and disclosure is not permitted under another exception in this section, disclosure may be made to a person other than a licensee if the disclosure is limited to that which is reasonably necessary to enable

the person to perform services or an insurance function for the disclosing licensee and if the person is notified by the licensee that the person is prohibited from:

(a) using the information other than to carry out the limited purpose for which the information is disclosed; and

(b) disclosing the information other than to the licensee and as allowed in subsection (3).

(20) Notwithstanding any other provision of this chapter, disclosure for a marketing purpose may be made only as allowed by [section 8].

(21) Nothing in this section may be construed to prevent the disclosure of personal information that is otherwise discoverable pursuant to the Montana Rules of Civil Procedure.

~~(18)~~(22) The commissioner may~~, after notice and hearing,~~ adopt rules creating additional exceptions to disclosure restrictions for the purpose of allowing a licensee or insurance-support organization to carry out ~~the provisions of this section. The rules may not define the recordkeeping requirements regarding authorized disclosures of personal or privileged information pursuant to subsections (2) through (17) but may define the requirements of any agreement obtained by an insurance institution, insurance producer, or insurance-support organization regarding disclosures of personal or privileged information~~ a necessary insurance function. The commissioner shall adopt rules establishing the methods that must be used by licensees to prevent identification as described in subsection (14)."

Section 8. Personal information used for marketing purposes -- restrictions. (1) Except as permitted in this section, a licensee may not use or disclose personal information for a marketing purpose. For the purposes of this section, an insurance producer who describes to the producer's clients products or services available through the producer is not engaged in marketing.

(2) A licensee may use or disclose to another licensee personal information that is reasonably necessary to enable the licensee to market insurance products or services. A licensee may use or disclose to another licensee personal information, excluding medical record information, that is reasonably necessary to enable the licensee to market financial products and services. A licensee that receives personal information under this section from a disclosing licensee may not further disclose the information or use the information for any purpose other than marketing insurance and financial products and services.

(3) A licensee may disclose personal information that is reasonably necessary to enable an

affiliate that is not a licensee to market insurance products and services. A licensee may disclose to an affiliate that is not a licensee personal information, excluding medical record information, that is reasonably necessary to enable the affiliate to market financial products and services. Disclosures under this subsection may be made only with a written agreement with the affiliate that the affiliate will not further disclose the information and will use it only for marketing insurance or financial products and services.

(4) A licensee may disclose personal information that is reasonably necessary to enable a person contractually engaged to provide services for or on behalf of the licensee to market insurance or financial products or services if the person agrees in writing that the person will not use or further disclose information obtained or developed pursuant to the engagement except to carry out the limited purpose of the engagement. A licensee shall adopt, maintain, and monitor policies and procedures reasonably designed to ensure that third parties with whom the licensee contracts under this subsection comply with the requirements of this section.

(5) A licensee may use or disclose personal information for purposes other than those specified in subsections (2) and (3) only with an individual's separate written authorization. In addition to meeting the requirements of [section 6], the authorization must:

(a) clearly and conspicuously state that the disclosed information is intended to be used for marketing purposes;

(b) specify each entity or type of entity to which the licensee intends to disclose the information;

(c) specify what information the licensee intends to disclose; and

(d) specify the type of marketing that the individual might receive pursuant to the disclosure.

Section 9. Section 33-19-405, MCA, is amended to read:

"**33-19-405. Civil ~~penalties~~ penalty.** ~~If a hearing pursuant to 33-19-402 results in the finding of a knowing violation of~~ A person who violates this chapter, ~~the commissioner may order payment of a~~ is subject to the civil penalty ~~of not more than $500 for each violation but not to exceed $10,000 in the aggregate for multiple violations~~ provided in 33-1-317."

Section 10. Section 33-19-407, MCA, is amended to read:

"**33-19-407. Individual remedies.** (1) If any insurance institution, insurance producer, or insurance-support organization fails to comply with 33-19-301, 33-19-302, or 33-19-303 with respect to the rights granted under those sections, any person whose rights are violated may apply to the district court of this state or any other court of competent jurisdiction for appropriate equitable relief.

(2) An insurance institution, insurance producer, or insurance-support organization that discloses information in violation of 33-19-306 or [section 8] is liable for damages sustained by the individual to whom the information relates. However, an individual is not entitled to a monetary award ~~which~~ that exceeds the actual damages sustained by the individual as a result of a violation of 33-19-306 or [section 8].

(3) In ~~any~~ an action brought pursuant to this section, the court may award the cost of the action and reasonable ~~attorney's~~ attorney fees to the prevailing party.

(4) An action under this section must be brought within 2 years from the date the alleged violation is or should have been discovered.

(5) Except as specifically provided in this section, there is no remedy or recovery available to individuals, in law or in equity, for occurrences constituting a violation of any provision of this chapter."

Section 11. Repealer. (1) Section 33-19-204, MCA, is repealed.

(2) Sections 33-19-402, 33-19-404, and 33-19-406, MCA, are repealed.

Section 12. Codification instruction. [Sections 3, 4, 6, and 8] are intended to be codified as an integral part of Title 33, chapter 19, and the provisions of Title 33, chapter 19, apply to [sections 3, 4, 6, and 8].

Section 13. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 14. Effective dates. (1) Except as provided in subsection (2), [this act] is effective July 1, 2001.

(2) [Sections 4, 7(22), 11(1), 12, and 13 and this section] are effective on passage and approval.

Section 15. Retroactive applicability. [Section 11(1)] applies retroactively, within the meaning of 1-2-109, to all insurance policies in force, issued, or renewed on or after January 1, 2000.

- END -

Bill Draft Number: LC0964
Bill Type - Number: SB 465
Short Title: Revise insurance information and privacy act
Primary Sponsor: Eve Franklin

Bill Actions - Current Bill Progress: Became Law

Bill Action Count: 55

Action - Most Recent First	Date	Votes Yes	Votes No	Committee
Chapter Number Assigned	04/21/2001			
(S) Signed by Governor	04/21/2001			
(S) Transmitted to Governor	04/11/2001			
(H) Signed by Speaker	04/10/2001			
(S) Signed by President	04/10/2001			
(S) Returned from Enrolling	04/07/2001			
(C) Sent to Printing	04/06/2001			
(S) Sent to Enrolling	04/05/2001			
(S) 3rd Reading Passed as Amended by House	04/05/2001	49	0	
(S) Scheduled for 3rd Reading	04/05/2001			
(S) 2nd Reading House Amendments Concurred on Voice Vote	04/04/2001	49	0	
(S) Scheduled for 2nd Reading	04/04/2001			
(H) Returned to Senate with Amendments	03/31/2001			
(H) Motion Carried	03/31/2001			
(H) 3rd Reading Concurred	03/31/2001	97	3	
(H) Scheduled for 3rd Reading	03/31/2001			
(H) 2nd Reading Concurred	03/29/2001	97	1	
(H) Scheduled for 2nd Reading	03/29/2001			
(C) Sent to Printing	03/28/2001			
(H) Committee Report--Bill Concurred as Amended	03/27/2001			(H) Business and Labor
(H) Committee Executive Action--Bill Concurred as Amended	03/27/2001	18	1	(H) Business and Labor
(H) Hearing	03/22/2001			(H) Business and Labor
(H) Hearing Canceled	03/15/2001			(H) Business and Labor
(H) Hearing Canceled	03/06/2001			(H) Business and Labor
(H) Referred to Committee	03/03/2001			(H) Business and Labor

(H) First Reading	03/03/2001			
(S) Transmitted to House	02/22/2001			
(S) 3rd Reading Passed	02/22/2001	50	0	
(S) 2nd Reading Passed on Voice Vote	02/22/2001	50	0	
(S) Scheduled for 3rd Reading	02/22/2001			
(S) Scheduled for 2nd Reading	02/22/2001			
(C) Sent to Printing	02/21/2001			
(S) Committee Report--Bill Passed as Amended	02/20/2001			(S) Business and Labor
(S) Committee Executive Action--Bill Passed as Amended	02/20/2001	9	0	(S) Business and Labor
(S) Fiscal Note Printed	02/20/2001			
(S) Hearing	02/19/2001			(S) Business and Labor
(S) Fiscal Note Signed	02/19/2001			
(S) Fiscal Note Received	02/17/2001			
(C) Introduced Bill Text Available Electronically	02/16/2001			
(S) Referred to Committee	02/13/2001			(S) Business and Labor
(S) First Reading	02/13/2001			
(S) Introduced	02/13/2001			
(S) Fiscal Note Requested	02/13/2001			
(C) Draft Delivered to Requester	02/13/2001			
(C) Draft Ready for Delivery	02/13/2001			
(C) Draft in Assembly/Executive Director Review	02/13/2001			
(C) Draft in Final Drafter Review	02/13/2001			
(C) Bill Draft Text Available Electronically	02/12/2001			
(C) Draft in Input/Proofing	02/12/2001			
(C) Draft to Drafter - Edit Review [CAJ]	02/12/2001			
(C) Draft in Edit	02/09/2001			
(C) Draft in Legal Review	02/08/2001			
(C) Draft to Requester for Review	02/08/2001			
(C) Draft On Hold	12/06/2000			
(C) Draft Request Received	12/05/2000			

Sponsor, etc.

Sponsor, etc.	**Last Name/Organization**	**First Name**	**Mi**
Requester	Legislative Council		
Drafter	Niss	David	

By Request Of State Auditor
Primary Sponsor Franklin Eve

Subjects

Description	Revenue/Approp.	Vote Majority Req.	Subject Code
Insurance		Simple	INS
Privacy		Simple	PRIV

Additional Bill Information

Probable Fiscal Note: Yes
Preintroduction Required: N
Session Law Ch. Number: 341
DEADLINE
Category: General Bills
Transmittal Date: 02/23/2001
Return (with 2nd house amendments) Date: 03/31/2001

Section Effective Dates

Section(s)	Effective Date	Date Qualified
Sections 1-3, 5, 6, 7(1)-7(21), 8-10, 11(2), and 15	01-JUL-01	
Sections 4, 7(22), 11(1), and 12 -14	21-APR-01	

MINUTES

MONTANA SENATE
57th LEGISLATURE - REGULAR SESSION
COMMITTEE ON BUSINESS AND LABOR

Call to Order: By **CHAIRMAN MIKE TAYLOR**, on February 19, 2001 at 8:00 A.M., in Room 422 Capitol.

ROLL CALL

Members Present:

Sen. Mike Taylor, Chairman (R)
Sen. Mike Sprague, Vice Chairman (R)
Sen. Edward Butcher (R)
Sen. Vicki Cocchiarella (D)
Sen. Sam Kitzenberg (R)
Sen. Dale Mahlum (R)
Sen. Glenn Roush (D)
Sen. Don Ryan (D)

Members Excused: Sen. Dale Berry (R)

Members Absent: None.

Staff Present: Bart Campbell, Legislative Branch
Kyanne Kelly, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted:		SB 401, 2/17/2001; SB 428, 2/17/2001; SB 432, 2/17/2001; SB 465, 2/17/2001; SB 415, 2/17/2001; SB 420, 2/17/2001
	Executive Action:	SB 450; SB 480; SB 367; SB 441; SB 474; SB 415; SB 308; SB 428; SB 414; SB 432; SB 438; SB 401; SB 86

SENATOR MIKE TAYLOR, SD 37, PROCTOR, said this is a critical bill for economic development for Montana. It puts Montana in the aerospace business. And aerospace provides high paying jobs.

HEARING ON SB 465

Sponsor: SENATOR EVE FRANKLIN, SD 21, GREAT FALLS

Proponents: **Jan VanRiper, State Auditor's Office**
Jacqueline Lenmark, Am Insurance Assoc
Jerome Anderson, Nat. Assoc of Life Ins
Jon Metropoulos, Farmers Ins. Group
Greg Van Horssen, State Farm Insurance
Susan Witte, Blue Cross/Blue Shield
Roger McGlenn, Independent Ins. Agents
Al Pontrelli, Assoc of Insurance Advisor
Mary Allen, MT Benefits & Life Company

Opponents: None

Opening Statement by Sponsor:

{Tape : 2; Side : B; Approx. Time Counter : 3.7}

SENATOR EVE FRANKLIN, SD 21, GREAT FALLS, said this bill is an attempt to put some restrictions on the use of personal information that is gathered by insurance companies when it is a matter that was not condoned by the person whose information it was.

Proponents' Testimony:

Jan VanRiper, State Auditor's Office, explained the bill and amendments in detail. **EXHIBIT(bus41a08)EXHIBIT(bus41a09)**

Jacqueline Lenmark, American Insurance Association, supports this bill, but has some suggested amendments.

Jerome Anderson, National Association of Life Insurance, said he supports this bill, but would like to add some amendments.

Jon Metropoulos, Farmers Insurance Group, said he offers conditional but confident support, particularly if the amendments are approved.

Greg Van Horssen, State Farm Insurance, said he generally supports this bill, and he also supports the amendments advanced by the industry as well as the technical amendments.

Susan Witte, Blue Cross/Blue Shield, said she supports the bill, but has her own amendment, which would allow sharing of information in the small group setting.

Roger McGlenn, Independent Insurance Agents, said he conceptually supports this bill, subject to seeing the final amendments.

Al Pontrelli, Association of Insurance Advisor, said he supports this bill.

Mary Allen, Montana Benefits & Life Company, said she supports the bill.

Opponents' Testimony: None

Questions from Committee Members and Responses:

SENATOR DALE BERRY asked why there were so many amendments, and wondered if this could be fixed into a complete bill.

Jan VanRiper said later in the day all of the people would get together to come up with a final proposal for amendments.

Closing by Sponsor:

{Tape : 3; Side : B; Approx. Time Counter : 4.9}

SENATOR EVE FRANKLIN, SD 21, GREAT FALLS, said this is a complex bill which has been worked on for over a year. She said the bottom line is to fix the disclosure part.

HEARING ON SB 415

Sponsor: **SENATOR JOHN COBB, SD 25, AUGUSTA**

Proponents: **Susan Good, Allied Citizens for Health Care Equity**

Opponents: **Tanya Ask, Blue Cross/Blue Shield**
Claudia Clifford, Insurance Commissioners Office
Steve Turkiewicz, Montana Auto Dealers Association
Mary Allen, Montana Benefits & Life Company

SENATE LABOR & EMPLOYMENT
EXHIBIT NO. 8
DATE 2-19-2001
BILL NO. SB465

EXPLANATION OF SB465
INSURANCE INFORMATION AND PRIVACY ACT -- PROPOSED AMENDMENTS

SUBMITTED BY THE STATE AUDITOR'S OFFICE
BEFORE THE SENATE BUSINESS AND LABOR COMMITTEE
2/19/01

HOW WE GOT HERE

In 1999 the legislature passed SB103 that provided some additional consumer privacy protections. Last summer it became evident that the 1999 privacy amendments caused some troublesome unintended consequences. These centered around the requirement that insurance companies get signatures from consumers before any personal information could be collected.

At about the same time federal legislation (Gramm-Leach-Bliley) and federal rules (HIPAA regulations) were passed that required changes in Montana privacy law. In response to the problems stemming from the 1999 amendments and to these federal developments, the State Auditor's Office convened a working group comprised of representatives of the insurance industry and of consumer groups to come up with some new privacy legislation. This bill represents the results of extended negotiations within that group.

SB465 HAS 4 GOALS:

1. Fix problems with Montana's privacy Act concerning the collection of information.

2. Comply with the privacy requirements of the federal Gramm-Leach-Bliley Act ("GLB") that regulates financial institutions and insurance carriers.

3. Comply with HIPAA regulations from the federal Department of Health and Human Services. These are voluminous new regulations about medical record privacy that apply to insurance carriers.

4. Tighten restrictions on the use and disclosure of personal information for marketing purposes.

HOW IT WORKS UNDER THE CURRENT ACT AND THE BILL:

Montana, with 16 other states, adopted a 1984 model privacy act. The structure of that Act is retained for consistency with those other states.

There are six primary provisions in the bill. First, it deletes completely the requirement that written authorization be obtained from an individual prior to **collecting** personal information.

Second, it requires insurers and producers to tell consumers the kinds of personal information they can and will disclose without the consumers' permission under the "statutory exceptions," and the rights consumers have under the Act regarding accessing

information held by carriers and producers. These are referred to as the "**notice requirements.**"

Third, it generally prohibits insurance carriers and producers (agents) from **disclosing personal information** about an individual to others, with several exceptions, called "statutory disclosures," which enable the carriers to do their insurance business.

Fourth, it tightens the restrictions on **marketing** any consumer's personal information without the person's express written authority.

Fifth, the bill alters the **penalties** against insurers and producers for violating the Act.

Sixth, this bill provides for **coordination** of this Act's medical records privacy provisions and similar **federal** provisions.

There is one thing the bill does not do. It does not change the current law that requires insurers and producers to keep certain records about disclosures they make, and to allow consumers access to that information.

1. CHANGES TO COLLECTION AUTHORIZATION REQUIREMENTS (page 18, line 3.)

The bill completely does away with the requirement that people sign a form before any information can be collected about them. This would bring Montana back into line with other states, and solve a number of unanticipated problems created for insurers and consumers by this requirement. The consumer groups on our privacy task force agreed that it is a good idea to do away with the signature requirement before information collection, as long as the law continues to protect what can be done with personal information once it is gathered.

2. NOTICE REQUIREMENTS (page 7, line 16)

The changes are mostly those few that are required for Montana to come into compliance with the Gramm-Leach-Bliley federal privacy requirements. Under the bill, insurers and/or producers must supply notices as follows:

(1) (page 7, line 21+) (*current numbering problem – will amend)* To **policyholders**:

- when a policy is issued and renewed
- at least every 12 months (current law is 24 months)
- (p. 8) when a new product or service is provided, or on reinstatement, unless the existing privacy notice is accurate (only slight change from current law)

(2) (page 8, line 16+) **Contents** of the notice – generally must describe what information may be disclosed without the consumer's written authorization under the statutory exceptions, consumer's rights to access information about disclosures and the insurer's policies and procedures for protecting privacy (some additions to current law – GLB requirement)

(3) (p. 9, line 19+) Notices to **non-policy holders**:
applicants – upon submission of application
others – whenever the insurer/producer seeks to disclose any personal information other than a statutory exception disclosure (new – GLB requirement)

(4) (p.10, line 6+) Allows insurers to send notice to primary policyholder, instead of having to send it to all individuals covered under the policy (new)
(5) (p. 10, line 11) Disallows any statutory disclosure unless notice requirements are met
(6) (p.10, line 14+)Describes ways notice may be legally delivered (new – GLB requirement)

3. DISCLOSURE PROTECTIONS AND EXCEPTIONS (page 11, line 18+)

The current laws regarding disclosures are all found in 33-19-306. The bill makes changes to that section, and adds a new sections concerning disclosures for marketing purposes (section 8). Currently and under the bill, 33-19-306 prohibits disclosure of personal information without written authorization from an individual, except as allowed in the various exceptions in 306. These exceptions are intended to allow insurance agents and companies to perform their regular insurance functions without having to get an authorizing signature.

The changes proposed to the 306 exceptions in this bill in some cases are meant to rectify problems created by the 1999 amendments to the privacy Act, and in some cases to comply with GLB. The highlights of these changes are:

- If an insurer/producer wants to make a disclosure not specifically allowed in 306, it must obtain written **authorization** from the individual (current law). Under the bill, subsection (2)(p.11) refers to new section 6 (p. 10). That new section expands the requirements of what must go into such an authorization form (GLB requirement)
- Major 306 "statutory exceptions" (not all the exceptions are discussed here – only major ones). References are to subsections.
  (3)(p.12) fraud – disclosures may be made to investigate, detect, etc., fraud and material misrepresentation (current law); those receiving the information may further disclose it *if necessary* (change required because current prohibition on further disclosure made many fraud investigations impossible)
  (4) (p.12) between "licensees" (insurers and producers)
  - to detect fraud
  - to perform "insurance functions"
  - further disclosure prohibited except as allowed in 306
  (not much change from current law, except "insurance support organizations" removed)
  (12) (p.14) From a licensee to an affiliate
  -to conduct audits or to allow an affiliate to perform an insurance function for a licensee
  - further disclosures allowed by affiliates only with restrictions (slight change to further disclosure provision; new: disallows disclosures to affiliates for marketing purposes except in conformance with new section 8)
  (18) (p.15) If an insurer/producer has a contract with another entity (for example a claims adjusting agency) to help the insurer/producer to

perform its insurance function (e.g. adjust claims), this sections allows disclosure to that entity as necessary. It also allows the entity to further disclose information if necessary, with restrictions on any further use or disclosure. (New: GLB provision.)

(19) (p.16) This provides an exception if there is no other exception in 306, and an insurer/producer has to make a disclosure in order to perform an insurance function. It requires the insurer/producer to tell whomever it discloses information to that the information may not be used for any other purpose, nor be further disclosed. (This exception is new, and is in response to industry and consumer concerns about getting certain insurance transactions done readily. An example would be if an insurer must disclose a policyholder's name, address, car ownership, etc. to a tow truck driver to get the vehicle towed away from an accident scene.)

(21) (p.16) This rulemaking authority would allow the Commissioner to adopt by rule further statutory disclosure exceptions as deemed necessary. There is a concern (especially given the problems encountered after the 1999 amendments) that an insurer might not be able necessary insurance transaction if the disclosure exceptions were not adequate. Given the disclosure opportunities under new subsection (19) and by written authorization, further exception by rule may not be necessary

4. RESTRICTIONS ON MARKETING (page 16, line 21)

This new section prohibits the use and disclosure of information for marketing purposes except by insurers/producers and their affiliates for insurance marketing. It allows use and disclosure for other marketing purposes only with the written authorization from the individual, and describes what has to go into an authorization form.

5. PENALTIES (p. 17, line 11+; repealers, p. 18, line 4; p. 17, lines 22, 24, 25)

Current law allows for restricted individual remedies against those who violate the privacy Act, and allows the Commissioner to fine violators administratively. The bill seeks to omit unnecessary language regarding **hearing procedures** that are duplicated in the Montana Administrative Procedures Act (repealers, p. 18, line 4), and to bring the administrative fines in line with **fines** for most other code violations (p. 17, lines 11-14). It adds violations of the **marketing** provisions to the violations for which an individual can bring a separate suit (p. 17, lines 22, 24, 25).

6. CONSISTENCY WITH FEDERAL LAW (p. 7, line 2+)

The federal government, pursuant to the Health Insurance Portability and Accessibility Act ("HIPAA), recently adopted approximately 600 pages of regulations aimed at protecting the privacy of medical record information. The Commissioner wishes to avoid having carriers develop one set of policies and procedures for federal regulation and another set for state regulation. Provisions in this bill allow a carrier to be exempt from complying with a provision of the Montana Act *if* it is inconsistent with a similar federal requirement, *unless* the Montana provision is more protective of privacy. The bill allows Montana to retain enforcement authority where there is

consistency between the federal and state provisions. (See also new language in the "purpose" section (p. 2, line 2+)). The Commissioner strongly believes that Montana wants to retain its own enforcement authority instead of turning it over to the federal government, which has no experience in insurance regulation.

7. MISCELLANEOUS

AUTHORIZATIONS – **NO ADVERSE TREATMENT** (page 10, line 24+)

This new section describes what must go into a form that an individual signs to authorize an insurer or producer to disclose information that is not statutorily allowed under 33-19-306. Much of the language is current; some is changed to comply with GLB. Subsection (5) [p. 11, line 13] prohibits adverse treatment of an individual who does not sign an authorization.

DEFINITIONS (p. 5, lines 8, 9; p. 5, lines 6-8)

Two definitions are slightly changed in this bill. Insurers and producers are now referred to and defined as "**licensees**" (p. 5, subsection 16) for ease of reference.

The definition of "**insurance functions**" is expanded to include subrogation claims and "insurance transactions" (defined at subsection 10, p. 4). This expansion is necessary to make sure that everything necessary to service an insurance application and policy is included in the definition.

RULE-MAKING (p. 7, lines 12, 13)

Section 4 gives the Commissioner rule-making authority to carry out the Act.

SENATE LABOR & EMPLOYMENT
EXHIBIT NO. 9
DATE 2-19-2001
BILL NO. SB465

SB465
CONCEPTUAL AMENDMENTS
OFFERED BY THE STATE AUDITOR
2/19/01

1. Page 7,8. 33-19-202 (1) Renumber so that paragraph one is an introductory paragraph, and subsection (a) becomes subsection (1). Renumber the following subsections accordingly.

2. Page 7. Change references in renumbered subsection (1) all to "insurance producer"

3. Page 9, line 21. Add "a written" before "application," so that the notice requirement would not apply to an application taken entirely over the phone.

4. Page 9, lines 21, 22. Delete "an insurance institution shall provide a notice as described in subsection (2)". This was a drafting error.

5. Page 10, lines 11 – 13. Omit subsection (5). This section has caused confusion and is unnecessary.

6. Page 15, lines 12 –14. Rewrite as follows: "... agrees not to further disclose the information ~~without the individual's separate, written authorization~~. Information disclosed pursuant to this subsection must be edited to prevent the identification of the applicant, policyholder, or certificate holder, unless the licensee obtains a written authorization from an individual to disclose identifiable information, and the group policyholder agrees not to further disclose the information.

This amendment would clean up an inconsistency and allow an individual to consent to disclosure of identifiable personal information.

7. Page 18, line 16. Change the effective date from June 1, 2001 to July 1, 2001.

DATE 2-19-2001

SENATE COMMITTEE ON Business & Labor

BILLS BEING HEARD TODAY: SB 401, SB 415, SB 432, SB 428, SB 450, SB 465

PLEASE PRINT

NAME	PHONE	REPRESENTING	BILL #	SUPPORT	OPPOSE
Gina Bartlett	723-4349	BLDC MEDIA	432	✓	
Wendy Young	495-0497	WEEL	SB 401		✓
Roger McGlenn	442-9555	IJAM	401 465	✓	
JEROME ANDERSON	449-3118	ACLU	465	✓	
A Smith	443-3124	MTLA	SB401		✓
Jodi Medlar	449-0570		SB401		✓
Rebecca?					
A Smith	443-3124	MTLA	SB465	✓	
" "	" "	" "	SB428	✓	
Jane Lopp	257-6886	self	SB401		✓
Mary Arnold	449-2833	self	SB401		✓
Jamie Butler	442-6710		SB 465 SB401	✓	✓
Susan Good		SELF ACLU	401 415	✓ ✓	

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

DATE 2-19-2001

SENATE COMMITTEE ON Business & Labor

BILLS BEING HEARD TODAY: SB 401, SB 415, SB 432, SB 428, SB 450, SB 465

PLEASE PRINT

NAME	PHONE	REPRESENTING	BILL #	SUPPORT	OPPOSE
[redacted]					
JOE MAZURECK	457-2008	DA DAVIDSON & Company	SB 450	✓	
Dave Micheletti	494-728	MSE Technology Applications Inc	SB 432	X	
Greg Van Horssen	4-0230	State Farm Ins	SB 450 SB 465	✓	
Jan Van Rosr	4-8288	MT Ins Dept	SB 465	✓	
MAE NAN ELLINGSON	721-6625	Dept of Comm. Dorsey & Whitney	SB 432		
Jim Kambich	782-0463	MERDI / MSE	SB 432	✓	
Joel Hepcoke	7255717	MSE	SB 432		
STEVE Turkiewicz	442-1233	Mt. Auto Dealers Assn	SB 415		✓
AL BOUTRELLI	442-9555	MAIFA	SB 465	✓	
Jacqueline Lenmark	442-0230	Am. Ins. Assn	SB 450 SB 465	✓ ✓	
Greg Van Horssen	2-0230	State Farm Ins	SB 415		✓
Jan Metropoulos	2-8560	NAII & FIC	SB 450 SB 465		
MARY C. ALLEN	443-7531	MT BENEFITS & LIFE, CO	SB 415 SB 465	✓	X
SUSAN C. WITTE 444-8793		Blue Cross Blue Shield MT	SB 465	✓ w/ amendment	

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

Tanya Ask - Submitted testimony of Bill McDonald (444-8797) MT Assn of Health Purchasers — SB 415 — X

[redacted]

DATE 2-19-2001

SENATE COMMITTEE ON Business & Labor

BILLS BEING HEARD TODAY: SB401, SB415, SB432, SB428, SB450, SB465

PLEASE PRINT

NAME	PHONE	REPRESENTING	BILL #	SUPPORT	OPPOSE
Vernon Berkelsen	442-3279	MSCA	465	✓	
Dorothea Berkelsen	442-3279	MSCA	465	✓	
ANDY POOLE	444-3197	MT Dept of Commerce	432	✓	
Claudia Clifford	444-4613	State Auditor	SB 401		✓
Claudia Clifford	"	" "	SB 415		✓
Rebecca Mock	449-0124	MWL	SB 401		✓
Marcia Youngren	587-5704	Chamber Alliance for Ending Sex in Discrimination Insurance	SB 401		✓
Linda Gryczan	449-7917	Montana Women's Lobby	SB401		✓
DARRELL HAZER	442-1708	AFL-CIO	SB428	✓	
"	"	"	SB401		✓
"	"	"	SB465	✓	
Tanya Ask	444-8297	Blue Cross Blue Shield of MT	SB415		✓
Jerry Keck	444-1555	Dept. of Labor	SB 401	Informational	
Joan C. Wilke	444-8975	Blue Cross Blue Shield	SB 465	✓ Amendment	

VISITOR REGISTER of MT

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

MONTANA SENATE
2001 LEGISLATURE
BUSINESS AND LABOR COMMITTEE
ROLL CALL

DATE Feb 19, 2001

NAME	PRESENT	ABSENT	EXCUSED
SENATOR DALE BERRY			✓
SENATOR ED BUTCHER	✓		
SENATOR VICKI COCCHIARELLA	✓		
SENATOR SAM KITZENBERG	✓		
SENATOR DALE MAHLUM	✓		
SENATOR GLENN ROUSH	✓		
SENATOR DON RYAN	✓		
SENATOR MIKE SPRAGUE, VICE CHAIR	✓		
SENATOR MIKE TAYLOR, CHAIR	✓		

MONTANA SENATE
2001 LEGISLATURE
BUSINESS AND LABOR COMMITTEE 3:00 PM
ROLL CALL
DATE 2-19-2001

NAME	PRESENT	ABSENT	EXCUSED
SENATOR DALE BERRY	✓		
SENATOR ED BUTCHER	✓		
SENATOR VICKI COCCHIARELLA	✓		
SENATOR SAM KITZENBERG	✓		
SENATOR DALE MAHLUM	✓		
SENATOR GLENN ROUSH	✓		
SENATOR DON RYAN	✓		
SENATOR MIKE SPRAGUE, VICE CHAIR	✓		
SENATOR MIKE TAYLOR, CHAIR	✓		

MINUTES

MONTANA SENATE
57th LEGISLATURE - REGULAR SESSION
COMMITTEE ON BUSINESS AND LABOR

Call to Order: By **CHAIRMAN MIKE TAYLOR**, on February 20, 2001 at 7:00 A.M., in Room 422 Capitol.

ROLL CALL

Members Present:

Sen. Mike Taylor, Chairman (R)
Sen. Mike Sprague, Vice Chairman (R)
Sen. Dale Berry (R)
Sen. Edward Butcher (R)
Sen. Vicki Cocchiarella (D)
Sen. Sam Kitzenberg (R)
Sen. Dale Mahlum (R)
Sen. Glenn Roush (D)
Sen. Don Ryan (D)

Members Excused: None.

Members Absent: None.

Staff Present: Bart Campbell, Legislative Branch
Kyanne Kelly, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted:
Executive Action: SB 491; SB 490; SB 402;SB 465; SB 441; SB 277; SB 401; SB 86

Motion: **SEN. COCCHIARELLA** moved that **SB 402 DO PASS AS AMENDED.**

Discussion: **SENATOR ED BUTCHER** thinks this would put a great strain on small business people who are just getting started. He said he thinks this would penalize the small business people.

SENATOR VICKI COCCHIARELLA said they could include the medical insurance into the cost of their bid. She said this would save everybody money.

Vote: **Motion carried 5-4 with Berry, Butcher, Mahlum, and Taylor voting no.**

EXECUTIVE ACTION ON SB 465

Motion: **SEN. COCCHIARELLA** moved that **AMENDMENTS TO SB 465 BE ADOPTED.**

Discussion: **SENATOR COCCHIARELLA** said these amendments were agreed to by the revising committee from the auditor's office and insurance people.

Jan Van Riper said these amendments were agreed upon.

CHAIRMAN TAYLOR said he has concerns about the amendments. **Jan Van Riper** said that some people still want more amendments, but the current ones meet agreement.

Vote: **Motion carried unanimously.**

Motion/Vote: **SEN. COCCHIARELLA** moved that **SB 465 DO PASS AS AMENDED. Motion carried unanimously.**

EXECUTIVE ACTION ON SB 441

Motion/Vote: **SEN. RYAN** moved **SB 441** be taken off the table. **Motion carried 5-4 with Cocchiarella, Kitzenberg, Mahlum, and Taylor voting no.**

Motion: **SEN. RYAN** moved that **AMENDMENTS TO SB 441 BE ADOPTED.**

Discussion: **SENATOR RYAN** brought before the committee some amendments which would deal with the objection that passage of this bill would pass on an unfunded mandate to the 2003,

MONTANA SENATE
2001 LEGISLATURE
BUSINESS AND LABOR COMMITTEE
ROLL CALL

DATE 2-20-2001

NAME	PRESENT	ABSENT	EXCUSED
SENATOR DALE BERRY	✓		
SENATOR ED BUTCHER	✓		
SENATOR VICKI COCCHIARELLA	✓		
SENATOR SAM KITZENBERG	✓		
SENATOR DALE MAHLUM	✓		
SENATOR GLENN ROUSH	✓		
SENATOR DON RYAN	✓		
SENATOR MIKE SPRAGUE, VICE CHAIR	✓		
SENATOR MIKE TAYLOR, CHAIR	✓		

MONTANA SENATE
2001 LEGISLATURE
BUSINESS AND LABOR COMMITTEE
ROLL CALL VOTE

DATE 2-20-2001 BILL NO. SB465 NUMBER 6

MOTION: Sen C moves Amendments do pass 46501.abc

NAME	AYE	NO
SENATOR DALE BERRY		
SENATOR ED BUTCHER		
SENATOR VICKI COCCHIARELLA		
SENATOR SAM KITZENBERG		
SENATOR DALE MAHLUM		
SENATOR GLENN ROUSH		
SENATOR DON RYAN		
SENATOR MIKE SPRAGUE, VICE CHAIR		
SENATOR MIKE TAYLOR, CHAIR		

MONTANA SENATE
2001 LEGISLATURE
BUSINESS AND LABOR COMMITTEE
ROLL CALL VOTE

DATE 2-20-2001 BILL NO. SB 465 NUMBER #7

MOTION: Sen C moves DO PASS as amended

NAME	AYE	NO
SENATOR DALE BERRY	✓	
SENATOR ED BUTCHER	✓	
SENATOR VICKI COCCHIARELLA	✓	
SENATOR SAM KITZENBERG	✓	
SENATOR DALE MAHLUM	✓	
SENATOR GLENN ROUSH	✓	
SENATOR DON RYAN	✓	
SENATOR MIKE SPRAGUE, VICE CHAIR	✓	
SENATOR MIKE TAYLOR, CHAIR	✓	

Amendments to Senate Bill No. 465
1st Reading Copy

Requested by Senator Eve Franklin

For the Senate Business and Labor Committee

Prepared by Bartley Campbell
February 20, 2001 (1:39PM)

1. Page 7, line 16.
Strike: "(1)(a)"

2. Page 7, line 20.
Strike: "provided" through "(1)."
Insert: "follows:"

3. Page 7, line 21.
Following: "~~in~~"
Insert: "(1)"

4. Page 7, line 23.
Strike: "(i)"
Insert: "(a)"
Renumber: subsequent subsection

5. Page 7, line 27.
Strike: "licensee's"

6. Page 7, line 28.
Strike: "(3)(a)"
Insert: "(5)(a)"

7. Page 7, line 30.
Strike: "insurer or"

8. Page 8, line 1.
Strike: "producer"
Insert: "institution"

9. Page 8, line 2.
Strike: "(b)"
Insert: "(2)"
Renumber: subsequent subsection

10. Page 8, line 5.
Strike: "(i)"
Insert: "(a)"
Renumber: subsequent subsection

11. Page 8, line 16.
Strike: "(2)"
Insert: "(4)"
Renumber: subsequent subsections

12. Page 9, line 21.
Strike: "(2)"
Insert: "(4)"
Strike: "an"
Insert: "a written"

13. Page 9, lines 22 and 23.
Strike: "an" on line 22 through "(2)" on line 23

14. Page 9, line 24.
Strike: ". A"
Insert: ", a"
Following: "notice"
Insert: "must be"

15. Page 9, line 25.
Strike: "(3)(b)"
Insert: "(5)(b)"

16. Page 10, line 3.
Strike: "(2)"
Insert: "(4)"

17. Page 10, line 4.
Strike: "(3)(b)"

Insert: "(5)(b)"

18. Page 10, lines 11 through 13.
Strike: subsection (5) in its entirety
Renumber: subsequent subsection

19. Page 16, line 25.
Following: "."
Insert: "A licensee may use or disclose to another licensee personal information, excluding medical record information, that is reasonably necessary to enable the licensee to market financial products."

20. Page 16, line 27.
Following: "insurance"
Insert: "and financial products"

21. Page 16, line 29.
Following: "insurance"
Strike: "but only"
Insert: ". A licensee may disclose to an affiliate that is not a licensee personal information, excluding medical record information, that is reasonably necessary to enable the licensee to market financial products. Disclosures under this subsection may be made only"

22. Page 16, line 30.
Following: "insurance"
Insert: "or financial products"

23. Page 18, line 16.
Strike: "June"
Insert: "July"

- END -

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
57th LEGISLATURE - REGULAR SESSION
COMMITTEE ON BUSINESS AND LABOR

Call to Order: By **CHAIRMAN JOE MCKENNEY**, on March 22, 2001 at 8:00 A.M., in Room 172 Capitol.

ROLL CALL

Members Present:

Rep. Joe McKenney, Chairman (R)
Rep. Rod Bitney, Vice Chairman (R)
Rep. Gary Matthews, Vice Chairman (D)
Rep. Sylvia Bookout-Reinicke (R)
Rep. Roy Brown (R)
Rep. Nancy Fritz (D)
Rep. Dave Gallik (D)
Rep. Kathleen Galvin-Halcro (D)
Rep. Dennis Himmelberger (R)
Rep. Jim Keane (D)
Rep. Rick Laible (R)
Rep. Bob Lawson (R)
Rep. John Musgrove (D)
Rep. William Price (R)
Rep. Allen Rome (R)
Rep. Donald Steinbeisser (R)
Rep. Brett Tramelli (D)
Rep. James Whitaker (R)

Members Excused: Rep. Carol C. Juneau (D)

Members Absent: None.

Staff Present: Gordon Higgins, Legislative Branch
Jane Nofsinger, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: SB465, SB356, SB369, SB360, HB643, 3/19/2001
Executive Action: SB356, HB643, SB360, SB369

REP. BOOKOUT-REINICKE asked what the equipment cost. **Mr. Smith** said it costs between $6-10,000.

REP. WHITAKER asked **Mr. Kountz** if he had a list of hospitals which needed this equipment. **Mr. Kountz** said not yet, but the fiscal note caps at $100,000 and that should be more than enough, because most major hospitals have it and the small rural ones are the ones which need it. **Mr. Havdahl** said the DPHHS has a program in place which is voluntary and 15 have purchased the equipment. He said 50% babies are being tested now.

Closing by Sponsor:

SEN. WATERMAN said this has been an excellent program in the past and this bill clarifies in statute what can be done and what cannot be done. She said **REP. GALVIN-HALCRO** would carry the bill in the House.

{Tape : 1; Side : A; Approx. Time Counter : 22}

HEARING ON SB465

Sponsor: SEN. EVE FRANKLIN, SD21, CASCADE COUNTY

Proponents: John Morrison, State Auditor
Jan Van Riper, State Auditor's Office
Jacqueline Lenmark, AIA
Gregg Van Horssen, State Farm
Jon Metropolous, NAII
Jerome Anderson, American Council of Life Insurers
Al Pontrelli, NAFAI
Susan Witte, BCBS
Page Dringman, HIAA
Roger McGlenn, IIAM
Keith Colbo, AFLAC & US West Health Services
Mary Allen, Montana Benefits and Life Co.
Don Judge, MT AFL-CIO

Opponents: None

Opening Statement by Sponsor:

SEN. EVE FRANKLIN, SD21, CASCADE COUNTY, said a previous bill had unintended consequences and she had been working with a group of insurance carriers to resolve the matter. The insurance privacy bill will enable Montana to comply with the federal Gramm-Leach-

Bliley Act regarding HIPA regulations. HIPA refers to the federal regulation of medical information. She presented the committee a chart and an explanation of the history of the insurance privacy act. **EXHIBIT(buh65a02)**

Proponents' Testimony:

Mr. Morrison told the committee that much personal information about a patient is no longer stored in the doctor's metal filing cabinet, but frequently is apt to be put out over the internet. Information such as name, address, telephone numbers, credit history, investments and medical events are sent and transferred over the internet. Most people do not like this, he said, and this bill will help protect people's privacy in a smart way. He said his office has held a dozen meetings with representatives of 25 groups. The bill will require written consent prior to release of medical information, and would be a "good step forward," he said.

Ms. Van Riper presented a "gray bill" to the committee with the amended portions printed in red. She discussed the penalty, marketing and disclosure portions of the bill. She called the disclosures "the meat of the bill" and said information cannot be released without written consent. She said an exception to this was in the case of fraud, because it does not work when investigating fraud to ask for written consent. However, the bill does allow sharing between insurers or affiliates, but not third party disclosure.

{Tape : 2; Side : A; Approx. Time Counter : 0}

Ms. Denmark said she was also speaking for Gregg Van Horssen and Jon Metropolous and she strongly supported the bill as amended. She said the amendments were very technical and if the committee was to consider additional amendments they should do it very carefully.

Jerome Anderson, Al Pontrelli, Susan Witte, Page Dringman, Roger McGlen, Keith Colbo, Mary Allen, and Don Judge also appeared in support of the bill. **Mr. Judge** offered an amendment.

Opponents' Testimony: None

Questions from Committee Members and Responses:

REP. GALVIN-HALCRO asked why the bill allowed insurance companies the marketing information, but not other people. **Mr. Morrison** said the agents are responsible for meeting their clients needs

and have a responsibility to their clients to provide them the product they need.

Closing by Sponsor:

SEN. FRANKLIN closed by saying that the amendment offered by **Mr. Judge** was very technical and not everyone had signed off on it. She asked the committee if she could get back with them before they took executive action. She said the bill needed a sponsor in the House.

{Tape : 2; Side : B; Approx. Time Counter : 0}

HEARING ON SB356

Sponsor: SEN. DON HARGROVE, SD16, BELGRADE EXHIBIT(buh65a03)

Opening Statement by Sponsor:

SEN. DON HARGROVE, SD16, BELGRADE, presented an exhibit which described the one-stop licensing system. **EXHIBIT(buh65a04)**

Proponents' Testimony: None

Opponents' Testimony: None

Questions from Committee Members and Responses: None

Closing by Sponsor:

SEN. HARGROVE asked the committee for a Do Pass. He said **REP. BROWN** will sponsor the bill on the House Floor.

HEARING ON SB369

Sponsor: **SEN. BILL GLASER, SD08, HUNTLEY**

Proponents: **Gene Fenderson, Montana Joint Heavy & Highway Comm.**
Don Judge, Montana AFL-CIO
Pat Pennington, Pennington Construction
David Warner, Carpenter's Union

EXHIBIT 2
DATE 3-22-01
SB 465

2

SB 465 – Insurance privacy

HOW WE GOT HERE

Last summer it became evident that the 1999 privacy amendments had an unintended consequence of slowing down insurance company business and angering consumers. This centered around the requirement that insurance companies get signatures from consumers before any personal information could be collected.

Because federal legislation (Gramm-Leach-Bliley) and federal rules (HIPAA regulations) also required changes in Montana law, the State Auditor's Office convened a working group comprised of representatives of the insurance industry and of consumer groups. This privacy bill represents the results of extended negotiations within that group.

SB465 SEEKS TO AMEND THE CURRENT INSURANCE INFORMATION AND PRIVACY ACT TO MEET 4 GOALS:

1. Fix problems with Montana's privacy act concerning the collection of information.

2. Comply with the privacy requirements of the federal Gramm-Leach-Bliley Act that regulates financial institutions and insurance carriers.

3. Comply with HIPAA regulations from the federal Department of Health and Human Services. These are voluminous new regulations about medical record privacy that apply to insurance carriers.

4. Tighten restrictions on the use and disclosure of personal information for marketing purposes.

HOW IT WORKS UNDER THE BILL

CURRENT STRUCTURE OF PRIVACY ACT RETAINED

Montana, with 16 other states, adopted a 1984 model privacy act. The structure of that Act is retained for consistency with those other states.

There are six provisions in the current bill. First, it deletes completely the requirement that written authorization be obtained from an individual prior to **collecting** personal information.

Second, it requires insurers and producers to tell consumers of the kinds of personal information they can and will disclose without the consumers' permission under the "statutory exceptions," and the rights consumers have under the Act regarding accessing information held by carriers and producers. These are referred to as the "**notice requirements**."

Third, it generally prohibits insurance carriers and producers (agents) from **disclosing personal information** about an individual to others, with several exceptions, called "statutory exceptions," which enable the carriers to do their insurance business.

Fourth, the Act tightens the restrictions on **marketing** any consumer's personal information without the person's express written authority.

Fifth, the Act provides for **penalties** against insurers and producers for violating the Act.

Sixth, this Act provides for **coordination** of this Act's medical records privacy provisions and similar **federal** provisions.

There is one thing the bill does not do. It does not change the current law that requires insurers and producers to keep certain records about disclosures they make, and provides consumers ways to obtain access to personal information to that information.

1. CHANGES TO COLLECTION AUTHORIZATION REQUIREMENTS (page 18, section 11.)

The bill completely does away with the requirement that people sign a form before any information can be collected about them. This would bring Montana back into line with other states, and solve a number of unanticipated problems created for insurers and consumers by this requirement. The consumer groups on our privacy council agreed that it is a good idea to do away with the signature requirement before information collection, as long as the law continues to protect what can be done with personal information once it is gathered.

2. NOTICE REQUIREMENTS (page 7, section 5)

The changes are mostly those few that are required for Montana to come into compliance with the Gramm-Leach-Bliley federal privacy requirements. They mostly appear in 33-19-202. Under the bill, insurers and/or producers must supply notices as follows:

(subsection 1, p. 7) To policyholders:
- when a policy is issued and renewed - at least every 12 months (current law is 24 months)
- (p. 8) when a new product or service is provided, or on reinstatement, unless the existing privacy notice is accurate (only slight change from current law)

(sub 2) (page 8) Contents of the notice – generally must describe what information may be disclosed without the consumer's written authorization under the statutory exceptions, consumer's rights to access information about disclosures and the insurer's policies and procedures for protecting privacy (some additions to current law – GLB requirement)

(3) (p. 9) Notices to these non-policy holders:
applicants – upon submission of application
others – whenever the insurer/producer seeks to disclose any personal information other than a statutory exception disclosure (new – GLB requirement)

(4) (p.10) Allows insurers to send notice to primary policyholder, instead of having to send it to all individuals covered under the policy (new)

(7) (p.10)Describes ways notice may be legally delivered (new – GLB requirement)

3. DISCLOSURE PROTECTIONS AND EXCEPTIONS (page 11, section 7)

The current laws regarding disclosures are all found in 33-19-306. The bill makes changes to that section, and adds a new sections concerning disclosures for marketing purposes (section 8). Currently and under the bill, 33-19-306 prohibits disclosure of personal information without written authorization from an individual, except as allowed in the various exceptions in 306. These exceptions are intended to allow insurance agents and companies to perform their regular insurance functions without having to get an authorizing signature.

The changes proposed to the 306 exceptions in this bill in some cases are meant to rectify problems created by the 1999 amendments to the privacy Act, and in some cases to comply with GLB. The highlights of these changes are:

- If an insurer/producer wants to make a disclosure not specifically allowed in 306, it must obtain written authorization from the individual (current law). Under the bill, subsection (2)(p.11) refers to new section 6 (p. 10). That new section expands the requirements of what must go into such an authorization form (GLB requirement)
- Major 306 "statutory exceptions" (not all the exceptions are discussed here – only major ones). References are to subsections.

(sub 3)(p.12) fraud – disclosures may be made to investigate, detect, etc., fraud and material misrepresentation (current law); those receiving the information may further disclose it *if necessary* (change required because current prohibition on further disclosure made many fraud investigations impossible)

(4) (p.12) between "licensees" (insurers and producers)
- to detect fraud
- to perform "insurance functions"
- further disclosure prohibited except as allowed in 306
(not much change from current law, except "insurance support organizations" removed)

(12) (p.14) From a licensee to an affiliate
-to conduct audits or to allow an affiliate to perform an insurance function for a licensee
- further disclosures allowed by affiliates only with restrictions (slight change to further disclosure provision; new: disallows disclosures to affiliates for marketing purposes except in conformance with new section 8)

(18) (p.15) If an insurer/producer has a contract with another entity (for example a claims adjusting agency) to help the insurer/producer to perform its insurance function (e.g. adjust claims), this sections allows disclosure to that entity as necessary. It also allows the entity to further disclose information if necessary, with restrictions on any further use or disclosure. (New: GLB provision.)

(19) (p.16) This provides an exception if there is no other exception in 306, and an insurer/producer has to make a disclosure in order to perform an insurance function. It requires the insurer/producer to tell whomever it discloses information to that the information may not be used for any other

purpose, nor be further disclosed. (This exception is new, and is in response to industry and consumer concerns about getting certain insurance transactions done readily. An example would be if an insurer must disclose a policyholder's name, address, car ownership, etc. to a tow truck driver to get the vehicle towed away from an accident scene.)

(21) (p.16) This rulemaking authority would allow the Commissioner to adopt by rule further statutory disclosure exceptions as deemed necessary. There is a concern (especially given the problems encountered after the 1999 amendments) that an insurer might not be able necessary insurance transaction if the disclosure exceptions were not adequate. Given the disclosure opportunities under new subsection (19) and by written authorization, further rules may not be necessary

4. RESTRICTIONS ON MARKETING (section 8, p. 16)

- This new section prohibits the use and disclosure of information for marketing purposes except by insurers/producers and their affiliates for insurance marketing. It allows use and disclosure for other marketing purposes only with the written authorization from the individual, and describes what has to go into an authorization form. This section **expressly prevents a company from penalizing a consumer in any way for refusing to allow non-insurance related marketing** of that person's information.

5. PENALTIES (sections 9&10, p. 17)

Current law allows for restricted individual remedies against those who violate the privacy Act, and allows the Commissioner to fine violators administratively. The bill seeks to omit unnecessary language regarding hearing procedures (duplicated in the Montana Administrative Procedures Act), and to bring the administrative fines in line with fines for most other code violations (up to $25,000 per violation for an insurer, $5,000 for a producer)

6. CONSISTENCY WITH FEDERAL LAW (section 3, p. 6)

The federal government, pursuant to the Health Insurance Portability and Accessibility Act ("HIPAA), recently adopted approximately 600 pages of regulations aimed at protecting the privacy of medical record information. The Commissioner wishes to avoid having carriers develop one set of policies and procedures for federal regulation and another set for state regulation. Provisions in this bill allow a carrier to be exempt from complying with a provision of the Montana Act *if* it is inconsistent with a similar federal requirement, *unless* the Montana provision is more protective of privacy. The bill allows Montana to retain enforcement authority where there is consistency between the federal and state provisions. (See new language in the "purpose" section (section 1, p. 2) and in new section 3, p 7. The commissioner strongly believes that Montana wants to retain its own enforcement authority instead of turning it over to the federal government, which has virtually no experience in insurance regulation.

MISCELLANEOUS (section 2, p. 2)

Two definitions are slightly changed in this bill. Insurers and producers are now referred to and defined as "licensees" (p. 5, subsection 16) for ease of reference.

The definition of "insurance functions" is expanded to include subrogation claims and "insurance transactions" (defined at subsection 10, p. 4). This expansion is necessary to make sure that everything necessary to service an insurance application and policy is included in the definition.

2 Also

Proposed Changes in the Privacy Law

	SB 465
Collection	Information can be collected without written authorization from the consumer.
Notice Requirements	Insurers must tell consumers what kinds of personal information they can and will disclose without the consumers' permission, and the rights consumers have regarding to access their information.
Disclosure Protections & Exceptions	Prohibits insurers and agents from disclosing personal information about the consumer to others, except for purposes of doing insurance business. The exceptions are specified in statute, including removing obstacles to fraud investigation.
Marketing	Prohibits insurers and agents from using or disclosing personal information for the purpose of marketing without the consumer's consent. Exceptions allow the marketing of insurance or financial products and allows disclosures to affiliates only for these exceptions.
Adverse Treatment	Disallows adverse treatment of consumers who do not wish to authorize disclosure of personal information.
Penalties	Allows the commissioner three to [illegible] per violation for an insurer, and up to $5,000 per violation for an agent. Fines for consumers who report wrongful violations.
Compliance with Federal Laws	[illegible]

HOUSE OF REPRESENTATIVES
ROLL CALL

HOUSE BUSINESS AND LABOR COMMITTEE

DATE MARCH 22, 2001

NAME	PRESENT	ABSENT	EXCUSED
Rep. Joe McKenney	✓		
Rep. Gary Matthews	✓		
Rep. Roy Brown	✓		
Rep. Kathleen Galvin-Halcro	✓		
Rep. Carol Juneau			✓
Rep. Rick Laible	✓		
Rep. John Musgrove	✓		
Rep. Nancy Rice-Fritz	✓		
Rep. Don Steinbeisser	✓		
Rep. Jim Whitaker	✓		
Rep. Rod Bitney	✓		
Rep. Sylvia Bookout-Reinicke	✓		
Rep. Dave Gallik	✓		
Rep. Dennis Himmelberger	✓		
Rep. Jim Keane	✓		
Rep. Bob Lawson	✓		
Rep. Bill Price	✓		
Rep. Brett Tramelli	✓		
Rep. Allen Rome	✓		

MONTANA HOUSE OF REPRESENTATIVES
VISITORS REGISTER

Business and Labor Committee

DATE March 22, 2001

BILL NO. SB 465 SPONSOR(S) Sen. Franklin

TYPE
PROPONENT (P) OPPONENT (O) INFORMATIONAL (I)

PLEASE PRINT

PLEASE CIRCLE	NAME	ADDRESS	REPRESENTING
POI	Page Dinneman	Big Timber, MT	HIAA
POI	AL POWTRELLI	HELENA	MT AIFA
POI	Keith Colbo	Helena	AFLAC-New West
POI	Susan C. Witte	Helena	BlueCross BlueShield MT
POI	Jacqueline Lenmark	Helena	Am. Ins. Assn
POI	JEROME ANDERSON	HELENA	AMERICAN COUNCIL OF LIFE INSURERS
POI	Roger McGlenn	Helena	IIAM
POI	Greg Van Horsen	Helena	State Farm Ins.
POI	ED EATON	Helena	AARP
POI	MARY ALLEN	Helena	MT BENEFITS & LIFE'O
POI	Don Judge	Helena	MT AFL-CIO
POI	Jon Metropoulos	Helena	NAII, FIG
POI			
POI			

Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony

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MINUTES

MONTANA HOUSE OF REPRESENTATIVES
57th LEGISLATURE - REGULAR SESSION
COMMITTEE ON BUSINESS AND LABOR

Call to Order: By **CHAIRMAN JOE MCKENNEY**, on March 27, 2001 at 7:00 A.M., in Room 172 Capitol.

ROLL CALL

Members Present:

Rep. Joe McKenney, Chairman (R)
Rep. Gary Matthews, Vice Chairman (D)
Rep. Sylvia Bookout-Reinicke (R)
Rep. Roy Brown (R)
Rep. Nancy Fritz (D)
Rep. Dave Gallik (D)
Rep. Kathleen Galvin-Halcro (D)
Rep. Dennis Himmelberger (R)
Rep. Carol C. Juneau (D)
Rep. Jim Keane (D)
Rep. Rick Laible (R)
Rep. Bob Lawson (R)
Rep. John Musgrove (D)
Rep. William Price (R)
Rep. Allen Rome (R)
Rep. Donald Steinbeisser (R)
Rep. Brett Tramelli (D)
Rep. James Whitaker (R)

Members Excused: Rep. Rod Bitney, Vice Chairman (R)

Members Absent: None.

Staff Present: Gordon Higgins, Legislative Branch
Jane Nofsinger, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: HB650, 3/23/2001
Executive Action: SB405, SB480, SB340, SB445, HB650, HB593, SB469, SB474, SB298, SB327, SB465

Motion: REP. BROWN moved that SB327 BE CONCURRED IN.

Discussion:
Motion/Vote: REP. BROWN moved that SB327 BE AMENDED. Motion carried unanimously.

Motion/Vote: REP. BROWN moved that SB327 BE CONCURRED IN AS AMENDED. Motion carried unanimously.

EXECUTIVE ACTION ON SB465

Motion: REP. GALVIN-HALCRO moved that SB465 BE CONCURRED IN.

{Tape : 4; Side : A; Approx. Time Counter : 0}

Discussion:

Motion/Vote: REP. GALVIN-HALCRO moved that SB465 BE AMENDED. Motion carried unanimously.

Motion/Vote: REP. GALVIN-HALCRO moved that SB465 BE CONCURRED IN AS AMENDED. Motion carried 18-1 with Keane voting no.
REP. GALVIN-HALCRO will carry the bill in the House.

EXECUTIVE ACTION ON SB277

Motion/Vote: REP. GALLIK moved that SB277 BE TAKEN OFF THE TABLE. Motion failed 9-10 with Fritz, Gallik, Galvin-Halcro, Juneau, Keane, Lawson, Matthews, Musgrove, and Tramelli voting aye.

EXECUTIVE ACTION ON SB383

Motion/Vote: REP. GALLIK moved that SB383 BE TAKEN OFF THE TABLE. Motion failed 7-12 with Fritz, Gallik, Galvin-Halcro, Keane, Matthews, Musgrove and Tramelli voting aye.

HOUSE OF REPRESENTATIVES
ROLL CALL

HOUSE BUSINESS AND LABOR COMMITTEE

DATE March 27, 2001

NAME	PRESENT	ABSENT	EXCUSED
Rep. Joe McKenney	✓		
Rep. Gary Matthews	✓		
Rep. Roy Brown	✓		✓
Rep. Kathleen Galvin-Halcro	✓		
Rep. Carol Juneau	✓		
Rep. Rick Laible	✓		
Rep. John Musgrove	✓		
Rep. Nancy Rice-Fritz	✓		
Rep. Don Steinbeisser	✓		✓
Rep. Jim Whitaker	✓		
Rep. Rod Bitney			✓
Rep. Sylvia Bookout-Reinicke	✓		✓
Rep. Dave Gallik	✓		
Rep. Dennis Himmelberger	✓		
Rep. Jim Keane	✓		
Rep. Bob Lawson	✓		
Rep. Bill Price	✓		
Rep. Brett Tramelli	✓		
Rep. Allen Rome	✓		

HOUSE STANDING COMMITTEE REPORT

Mr. Speaker:

We, your committee on **Business and Labor** recommend that **Senate Bill 465** (third reading copy - blue) **be concurred in as amended**.

Signed: _____
Representative Joe McKenney, Chair

To be carried by Representative Kathleen Galvin-Halcro

And, that such amendments read:

1. Title, line 16.
Following: "DATES"
Insert: "AND A RETROACTIVE APPLICABILITY DATE"

2. Page 6, line 17.
Strike: "(a)"

3. Page 6, line 18.
Strike: "(i)"
Insert: "(a)"

4. Page 6, line 19.
Strike: "(21)"
Insert: "(22)"

5. Page 6, line 20.
Strike: "(ii)"
Insert: "(b)"

6. Page 6, line 22 through line 23.
Strike: subsection (b) in its entirety

Committee Vote:
Yes 18, No 1.

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7. Page 7, line 1.
Following: the first "is"
Insert: "subject to and"

8. Page 7, line 19.
Following: "(1)"
Insert: "(a)"
Strike: "In"
Insert: "Except as provided in subsection (2), in"

9. Page 7, line 21.
Strike: "(A)"
Insert: "(i)"

10. Page 7, line 26.
Strike: "(5)(A)"
Insert: "(4)(a)"

11. Page 7, line 27.
Following: "accurate;"
Strike: "and"

12. Page 7, line 28.
Strike: "(B)"
Insert: "(ii)"

13. Page 7, line 29.
Following: "."
Insert: "The notice to certificate holders required in this subsection (1)(a)(ii) is not required if the insurance institution has not had any communication, including receiving a claim, from a certificate holder since the initial or last annual notice provided to the certificate holder."

14. Page 7, line 30 through page 8, line 1.
Strike: "(2)"
Insert: "(iii)"
Strike: "In"
Insert: "in"
Strike: "a notice" on page 7, line 30 through "provided" on page 8, line 1

15. Page 8, line 3.
Strike: "(A)"

Insert: "(A)"

16. Page 8, line 4.
Strike: "(B)"
Insert: "(B)"

17. Page 8, line 6.
Strike: "(3)"
Insert: "(b)"

18. Page 8.
Following: line 13
Insert: "(2) (a) An insurance institution is not required to meet the requirements of this section with respect to certificate holders until the insurance institution has personally identifiable information regarding the certificate holder.

(b) Until the notice requirements of subsection (1) are met, a third party administrator or other agent or representative of an insurance institution may not disclose personal information, except as allowed in 33-19-306(2)."
Renumber: subsequent subsections

19. Page 9, line 18.
Following: "(a)"
Insert: "except as provided in subsection (7),"

20. Page 9, line 19.
Strike: "(4)"
Insert: "(3)"
Strike: "A WRITTEN"
Insert: "an"

21. Page 9, line 21.
Following: "~~(2)~~"
Insert: "a notice must be given"

22. Page 9, line 22.
Strike: "(21)"
Insert: "(22)"
Strike: ", A"
Insert: ". A"

23. Page 9, line 23.

Strike: "MUST BE"
Strike: "(5)(B)"
Insert: "(4)(b)"

24. Page 10, line 2.
Strike: "(4)"
Insert: "(3)"

25. Page 10, line 3.
Strike: "(5)(B)"
Insert: "(4)(b)"

26. Page 10, line 4.
Strike: "a person"
Insert: "an individual"

27. Page 10, line 15.
Strike: "consumer"
Insert: "intended recipient"

28. Page 10, line 18.
Following: ";"
Insert: "or"

29. Page 10.
Following: line 21
Insert: "(7) An insurance institution may provide the notice required in subsection (4)(a) telephonically if an application is submitted by telephone. A telephone notice under this subsection may be in abbreviated form as provided for in subsections (4)(b)(i) through (4)(b)(iv).

(8) If a licensee is required to provide notice concerning privacy in addition to the notice required by this section, the licensee may satisfy the notice requirements in this section through the use of combined or separate notices. If more than one notice form is used, a notice containing provisions specific to Montana must conspicuously refer to any other notice form."

30. Page 10, line 26.
Following: "law,"
Strike: remainder of line 26

31. Page 10, line 28.
Strike: "(i)"

32. Page 10, line 29.
Strike: "(ii)"
Insert: "(b)"
Renumber: subsequent subsections

33. Page 11, line 20.
Following: "~~transaction~~"
Insert: "collected or received in connection with an insurance transaction"

34. Page 13, line 12.
Strike: "and to the commissioner"
Insert: "or to an insurance regulatory agency"

35. Page 13, line 22 and 23.
Following: "subpoena" on line 22
Strike: ", or" on line 22 through "request" on line 23

36. Page 14, line 7 through line 8.
Strike: "or consummated"

37. Page 16.
Following: line 11
Insert: "(21) Nothing in this section may be construed to prevent the disclosure of personal information that is otherwise discoverable pursuant to the Montana Rules of Civil Procedure."
Renumber: subsequent subsection

38. Page 16, line 13.
Following: "licensee"
Insert: "or insurance-support organization"

39. Page 16, line 18.
Following: "function."
Insert: "The commissioner shall adopt rules establishing the methods that must be used by licensees to prevent identification as described in subsection (14)."

40. Page 16, line 22.
Following: "purpose."
Insert: "For the purposes of this section, an insurance producer who describes to the producer's clients products or services available through the producer is not engaged in marketing."

41. Page 16, line 24.
Following: "insurance"
Insert: "products or services"

42. Page 16, line 26.
Following: "PRODUCTS"
Insert: "and services"

43. Page 16, line 28.
Following: "PRODUCTS"
Insert: "and services"

44. Page 16, line 30.
Following: "~~only~~"
Insert: "products and services"

45. Page 17, line 2.
Strike: "LICENSEE"
Insert: "affiliate"
Following: "PRODUCTS"
Insert: "and services"

46. Page 17, line 4.
Following: "PRODUCTS"
Insert: "and services"
Following: line 4
Insert: "(4) A licensee may disclose personal information that is reasonably necessary to enable a person contractually engaged to provide services for or on behalf of the licensee to market insurance or financial products or services if the person agrees in writing that the person will not use or further disclose information obtained or developed pursuant to the engagement except to carry out the limited purpose of the engagement. A licensee shall adopt, maintain, and monitor policies and procedures reasonably designed to ensure that third parties with whom the licensee contracts under this subsection comply with the requirements of this section."
Renumber: subsequent subsection

47. Page 18, line 21.
Following: "Sections"
Insert: "4, 7(22),"

48. Page 18.
Following: line 21
Insert: "NEW SECTION. **Section 15. Retroactive applicability.**

[Section 11(1)] applies retroactively, within the meaning of 1-2-109, to all insurance policies in force, issued, or renewed on or after January 1, 2000."

- END -